IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7989 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARANDAS VANMALIDASH THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioner

MR SK PATEL, Learned AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/09/2000

C.A.V. JUDGEMENT

1. The petitioner has filed the present petition under Article 226 read with Articles 14, 19, 21 and 22 of the Constitution of India challenging the order of his

detention dated 19.5.2000 recorded by the second respondent in exercise of powers conferred on him by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. On receiving the petition, rule was issued and Mr. S.K.Patel, learned AGP appeared for State. I have heard learned advocates for the parties and have perused the papers. Mr. Patel, learned AGP has submitted affidavit in reply of Mr. A.K.Rakesh, District Magistrate, Rajkot at page -148.

3. Learned advocate appearing on behalf of the petitioner has argued at length that the petitioner was not supplied legible copies of documents and thereby, the valuable right of the petitioner of making effective representation has been taken away by the respondent. For that purpose, certain pages have been referred to by the learned advocate for the petitioner. However, if we look to the documents at pages- 82, 83, 90,91 and 144, it would be apparent that they relate to the statement of witnesses recorded by the Inquiry Officer before the detention order was passed. On going through these documents, it is clear that the documents are not legible and it is not possible to make out as to what the witnesses have stated in the said statement. Page-143 purports to be a document of sale in a sum of Rs. 75,000/- and same is also not legible. It is therefore clear that the aforesaid documents are not legible and there is no dispute that the said documents have been relied upon by the detaining authority for the purpose of passing detention order. This would mean that the petitioner was not supplied the legible copies of documents relied upon by the detaining authority. Supply of illegible document would amount to non supply of documents relied upon for the purpose of passing detention order. Therefore this is a case in which it can be said that the documents relied upon by the detaining authority have not been supplied inasmuch as the legible copies thereof have not been supplied to the petitioner. This has taken away the valuable right of making effective representation against his detention. Same way, this would also take away constitutional right guaranteed under Article 22(5) of the Constitution of India. Therefore, there is clear violation of principles of natural justice. Same way, there is violation of statutory as well as constitutional right of the petitioner of making effective representation since effective representation cannot be made unless legible copies of documents relied upon by the detaining

authority are supplied.

4. In this case it would be worthwhile to refer to a decision of this Court in Special Civil Application No. 618 of 1999 dated 3.3.2000 (Coram : B.C.Patel,J). Para. 3 of the said judgement reads as follows :

> Without addressing about legality of the grounds of detention, the learned advocate for the petitioner submitted that the petition is required to be disposed of on a short ground as the papers supplied to the detenu are not legible. In view of this, the detenu is deprived from making effective representation. He further stated that the all papers are not illegible but some papers are illegible and as a result of which, his right has been adversely affected. Mr. Patel, learned AGP after going through the papers, is not in a position to state that all the papers are legible, some of the papers are illegible. Suffice it to say that the same has deprived the detenu from making effective representation and hence the detention order requires to be quashed and set aside. The detention order passed against the detenu is hereby quashed and set aside. The detenu shall be released forthwith if he is not required in any other case. The petition is allowed. Rule is made absolute.

5. It would therefore be clear that if a document is relied upon and considered by the detaining authority for the purpose of detaining the petitioner and if the copy of that document supplied to the petitioner is not legible then valuable right of the petitioner of making effective representation has been taken away. This would be in violation of the principles of natural justice. It would also hurt the statutory right of the petitioner to make effective representation and ultimately, it would hurt the constitutional right under Article 22(5) of the Constitution of India. In that view of the matter, the aforesaid order of detention suffers from aforesaid infirmity and consequently, it is required to be quashed and set aside.

6. For the reasons stated above, this petition is required to be allowed and the order of detention is required to be set aside. Therefore, the present petition is allowed and the order of detention passed by the District Magistrate, Rajkot against the petitioner on 19.5.2000 placed at Annexure-A to the petition is ordered

to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute with no order as to costs. Direct service is permitted.

(D.P.Buch,J)

(vipul)